



November 15, 2017

Honorable Stacy L. Ruble  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), and consistent with Order No. 1865 granting the United States Postal Service's Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, the Postal Service is providing, as Attachments 2, 3, and 4, copies of EMS rate agreements between the Postal Service and foreign postal operators. The Postal Service has marked the non-public versions of the agreements as "Confidential" and "Non-Public" because they contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of each agreement to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, each such agreement contains the commercial information of the affected postal operator, and, as such, certain portions of each agreement are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached, as Attachment 1, an application for non-public treatment of certain portions of the agreements under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that one (or more) of these agreements becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator(s).

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in cursive script that reads "Kyle Coppin".

Kyle Coppin  
Attorney  
Global Business & Service Development

Enclosures

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed EMS rate agreements with foreign postal operators (the “Agreements”). The Postal Service is transmitting the Agreements to the Postal Regulatory Commission (“Commission”) in accordance with 39 U.S.C. § 407(d) and consistent with Order No. 1865 granting the Postal Service’s Motion for Reconsideration of Order No. 1822, PRC Docket No. CP2013-77, filed on September 19, 2013. The unredacted Agreements are being filed under seal, while redacted copies are included with the public filing. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

### **(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the

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<sup>1</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish

portions of material filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and grant its application for its non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the postal operators that are signatories to the Agreements are the only third parties with a proprietary interest in the material. Due to the sensitivity in providing the identification of each affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.<sup>2</sup> The Postal Service identifies as an appropriate contact person Stephanie Myles, Strategic Planning Specialist, Global Business, United States Postal Service. Ms. Myles's phone number is (202) 268-6415, and her email address is [stephanie.m.myles@usps.gov](mailto:stephanie.m.myles@usps.gov).

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a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting these documents concerning EMS service, which is with the designated postal operator of a foreign country. The documents transmitted consist of Agreements that defines the terms on which the Postal Service and the relevant operator exchange Express Mail Service (EMS) items, including rate information. The Postal Service maintains that the redacted portions of the documents should remain confidential.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors could use the information to undermine the Postal Service's position in negotiations, as well as the position of the foreign postal operator that is the signatory to the Agreements. Competitors could also use the identity of the relevant foreign postal operator to target that country for business to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Foreign postal operators could use the rate and discount information to undermine the Postal Service's position in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts in one or more of the Agreements are disclosed to the public. Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the Postal Service in an effort to lower the rates charged for delivery of EMS in the United States, or raise the rates charged for U.S. origin shipments.

Harm: Other foreign postal operators could use the rate and discount information to undermine the position of the respective foreign postal operator in negotiations concerning bilateral EMS charges.

Hypothetical: The rates and discount amounts are disclosed to the public.

Foreign postal operators obtain the information and use it to their advantage in negotiating bilateral EMS charges with the foreign postal operator in an effort to lower or raise the rates charged for delivery of EMS in those countries.

Alternatively, competitors use the pricing information to develop competing products.

Harm: Competitors could use the knowledge that the Postal Service has entered into arrangements for discounted EMS rates with certain foreign postal operators to the Postal Service's detriment when negotiating business arrangements with shippers in those countries.

Hypothetical: The identity of the countries with which the Postal Service has entered into arrangements for discounted EMS rates is disclosed to the public.

Another expedited delivery service's employee monitors the filing of this

information and passes the information along to its sales and marketing functions. The expedited delivery service determines that those countries provide a strategic market for increased competition, and then markets itself to those countries' postal operators as offering better rates and performance thresholds than the Postal Service.

Harm: Competitors could use performance thresholds to assess vulnerabilities and focus sales and marketing efforts to the postal operators' detriment.

Hypothetical: The information about EMS performance thresholds is disclosed to the public. Another expedited delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the postal performance level as a concrete comparison point, marketing itself to potential customers as offering performance better than the postal operators engaged in the exchange of EMS.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for international expedited and parcels products (including private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operator staff that already have access to this information, actual or potential customers of the Postal Service for products related to inbound EMS and

Outbound Priority Mail Express International, or similar products, should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

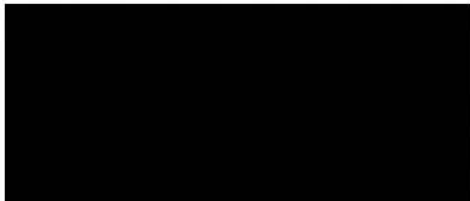
***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified material.

FRANCA DAVIS  
MANAGING DIRECTOR  
GLOBAL BUSINESS



September 15, 2017



Dear [REDACTED]

As a follow up to several communications between our two posts in the last several months, I am writing to provide you with a 2017 EMS delivery rate for your review and acceptance. I would like to note that [REDACTED]



As a valuable EMS P/P trading partner and in the interest of advancing the exchange of Electronic Advance Data (EAD) across our EMS trade lanes, I am in a position to offer [REDACTED] for 2017 volumes exchanged between US and [REDACTED]. This discounted rate is being offered to you based on the exchange of ITT/MAT data and communications received from you indicating your plans and timelines for increasing transmission of customs data sent to the United States.

Thus, your rate is reduced to [REDACTED]

We propose to apply the following discounted rates for the full calendar year 2017 for EMS items exchanged between [REDACTED] and USPS, including as a settlement and compromise of the parties' good faith EMS rate dispute concerning the past period from January 1, 2017 through the execution and filing of this letter agreement:

- United States to [REDACTED]
- [REDACTED] to the United States:



Please confirm your acceptance of these rates for 2017 by counter signature below and return a copy of the signed letter to Mr. Mico Milanovic by email to [mico.milanovic@usps.gov](mailto:mico.milanovic@usps.gov). As we continue to develop our strategy in this key area for EAD, I would like to inform you that the rate proposal included in this letter is valid for 2017 only and will not be applied for 2018.



In addition, the United States Postal Service (USPS) is subject to regulation by the Postal Regulatory Commission (PRC), an independent U.S. government agency. Under U.S. law, the USPS is required to file all commercial agreements signed with an agency of a foreign government, including this letter.

The USPS believes that it is possible that your organization may have a proprietary interest in information in this letter. Because we consider it to be sensitive commercial information, we will designate the letter as "non-public." In other words, the information in the letter will not be publicly available on the PRC's website; rather, it will be available only to the PRC staff and third persons who are able to certify that they are not involved in competitive decision making.

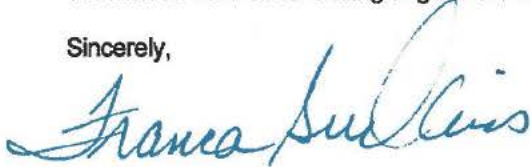
Under U.S. law (Title 39, Code of Federal Regulations, Part 3007), whenever the USPS files information non-publicly, the USPS is required to notify any organization that may have an interest in the nonpublic information that it is filing such information with the Commission, together with an application for the PRC to treat the information as non-public material. As required by its regulations, we will identify USPS, specifically Stephanie Myles, as the PRC's point of contact in the event that additional notices need to be sent concerning this filing. This is done to protect your confidentiality. USPS will inform you of any such notices it receives.

We are also required to notify you that your organization may address any confidentiality concerns that you may have directly with the PRC. At this time, we do not believe any action is needed on the part of your organization. However, we are required to advise you that the procedure for making a third-party application for non-public treatment of materials believed to be protected from disclosure may be found at Title 39, Code of Federal Regulations, Section 3007.22. You can view these regulations at the PRC's website, <http://www.prc.gov/Docs/63/63467/Order225.pdf>.

Again, we do not believe there is any need for action on your part; we are simply fulfilling our obligation to give your organization notice of the nonpublic filing, as required by U.S. law. If you have any questions or concerns, please feel free to contact Anthony Alverno, Chief Counsel, U.S. Postal Service Law Department, at 202-268-2997 or via e-mail at [anthony.f.alverno@usps.gov](mailto:anthony.f.alverno@usps.gov).

We look forward to continuing to grow the important EMS business between us.

Sincerely,



Franca S. Davis

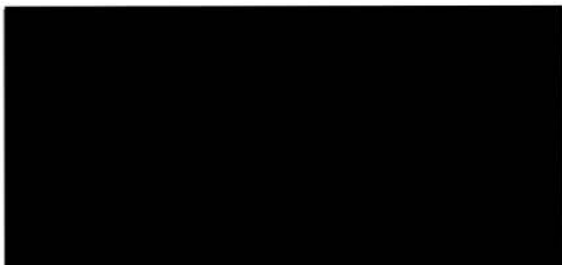
Acceptance of 2017 EMS Delivery Rates:



Date



October 3, 2017



Dear [REDACTED]

As a follow up to several communications between our two posts in the last several months, I am writing to provide you with a 2017 EMS delivery rate for your review and acceptance. I would like to note that [REDACTED]



As a valuable EMS PfP trading partner and in the interest of advancing the exchange of Electronic Advance Data (EAD) across our EMS trade lanes, I am in a position to offer [REDACTED] for 2017 volumes exchanged between US and [REDACTED]. This discounted rate is being offered to you based on the exchange of ITTMAT data and communications received from you indicating your plans and timelines for increasing transmission of customs data sent to the United States.

Thus, your rate is reduced to [REDACTED]



We propose to apply the following discounted rates for the full calendar year 2017 for EMS items exchanged between [REDACTED] and USPS, including as a settlement and compromise of the parties' good faith EMS rate dispute concerning the past period from January 1, 2017 through the execution and filing of this letter agreement:

- United States to [REDACTED]
- [REDACTED] to the United States:



Please confirm your acceptance of these rates for 2017 by counter signature below and return a copy of the signed letter to Mr. Mico Milanovic by email to [mico.milanovic@usps.gov](mailto:mico.milanovic@usps.gov). As we continue to develop our strategy in this key area for EAD, I would like to inform you that the rate proposal included in this letter is valid for 2017 only and will not be applied for 2018.

In addition, the United States Postal Service (USPS) is subject to regulation by the Postal Regulatory Commission (PRC), an independent U.S. government agency. Under U.S. law, the USPS is required to file all commercial agreements signed with an agency of a foreign government, including this letter.

The USPS believes that it is possible that your organization may have a proprietary interest in information in this letter. Because we consider it to be sensitive commercial information, we will designate the letter as "non-public." In other words, the information in the letter will not be publicly available on the PRC's website; rather, it will be available only to the PRC staff and third persons who are able to certify that they are not involved in competitive decision making.

Under U.S. law (Title 39, Code of Federal Regulations, Part 3007), whenever the USPS files information non-publicly, the USPS is required to notify any organization that may have an interest in the nonpublic information that it is filing such information with the Commission, together with an application for the PRC to treat the information as non-public material. As required by its regulations, we will identify USPS, specifically Stephanie Myles, as the PRC's point of contact in the event that additional notices need to be sent concerning this filing. This is done to protect your confidentiality. USPS will inform you of any such notices it receives.

We are also required to notify you that your organization may address any confidentiality concerns that you may have directly with the PRC. At this time, we do not believe any action is needed on the part of your organization. However, we are required to advise you that the procedure for making a third-party application for non-public treatment of materials believed to be protected from disclosure may be found at Title 39, Code of Federal Regulations, Section 3007.22. You can view these regulations at the PRC's website, <http://www.prc.gov/Docs/63/63467/Order225.pdf>.

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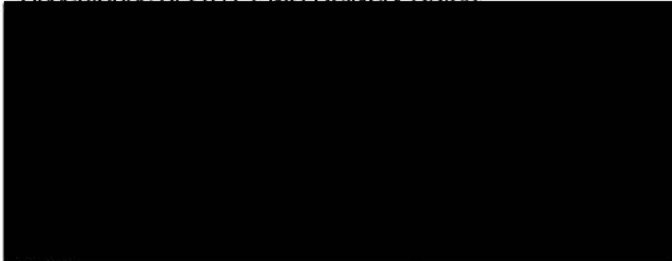
We look forward to continuing to grow the important EMS business between us.

Sincerely,



Franca Davis

Acceptance of 2017 EMS Delivery Rates:



Date

19. Oct. 2017





October 3, 2017

Dear [REDACTED]

As a follow up to several communications between our two posts in the last several months, I am writing to provide you with a 2017 EMS delivery rate for your review and acceptance. I would like to note that [REDACTED]

As a valuable EMS PfP trading partner and in the interest of advancing the exchange of Electronic Advance Data (EAD) across our EMS trade lanes, I am in a position to offer [REDACTED] for 2017 volumes exchanged between US and [REDACTED]. This discounted rate is being offered to you based on the exchange of ITMATT data and communications received from you indicating your plans and timelines for increasing transmission of customs data sent to the United States.

We propose to apply the following discounted rates for the full calendar year 2017 for EMS items exchanged between [REDACTED] and USPS, including as a settlement and compromise of the parties' good faith EMS rate dispute concerning the past period from January 1, 2017 through the execution and filing of this letter agreement:

- United States to [REDACTED]: [REDACTED]
- [REDACTED] to the United States: [REDACTED]

Please confirm your acceptance of these rates for 2017 by counter signature below and return a copy of the signed letter to Mr. Mico Milanovic by email to [mico.milanovic@usps.gov](mailto:mico.milanovic@usps.gov). As we continue to develop our strategy in this key area for EAD, I would like to inform you that the rate proposal included in this letter is valid for 2017 only and will not be applied for 2018.

In addition, the United States Postal Service (USPS) is subject to regulation by the Postal Regulatory Commission (PRC), an independent U.S. government agency. Under U.S. law, the USPS is required to file all commercial agreements signed with an agency of a foreign government, including this letter.

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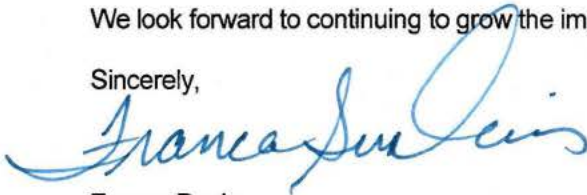
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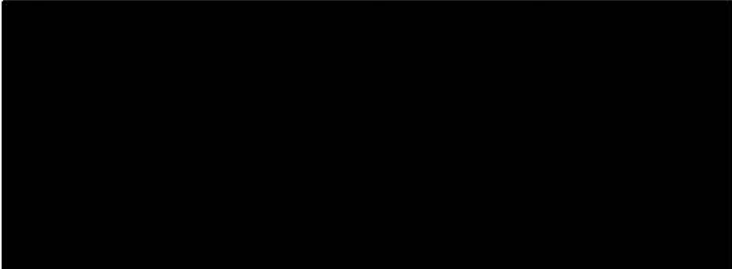
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We look forward to continuing to grow the important EMS business between us.

Sincerely,



Franca Davis



16 OCT 2017

Date